

REMARKS

This Response is submitted in reply to the Office Action mailed on October 21, 2009. The Office Action requires an election of species. In this regard, the Patent Office states that the patent application includes a species election among the types of raw plant material required in the elected product claims.

Applicants do not believe this election of species requirement is proper and respectfully traverse same. First, Applicants believe it would unduly limit Applicants' invention to make the election to only one individual species of the types of the raw plant materials. Moreover, Applicants respectfully submit that searching the three individual species will not place an undue burden on the Patent Office. For example, the classes to be searched would likely be the same or at least overlap for each of the species. In fact, the Patent Office has failed to show that separate classes would even need to be searched. In addition, the prior art for one species will likely be applicable to the other species in the same genus as well.

In addition, the Patent Office needs to find only a single species of the genus for the respective claims to be anticipated. The Patent Office does not need to find every possible species of the raw plant materials.

Finally, Applicants do not believe that this election of species will reduce the burden of examination to the Patent Office. Instead, Applicants will be required to file individual applications directed to each of the claimed species, which will only result in the Patent Office receiving an overload of additional applications directed to subject matter that could have easily been searched or handled in the presently pending application.

In the spirit of cooperation, Applicants respectfully elect *Beta* as the raw plant material. Pending Claims 3, 14 and 19 read on the elected species. Nevertheless, Applicants respectfully request that the election of species requirement be withdrawn. Applicants expressly reserve the right to file one or more divisional applications directed to the non-elected species.

Application No. 10/595,894
Reply to Office Action date October 2, 2009

The Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please reference Atty. Docket No. 3712036-735.

Respectfully submitted,

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